APPENDIX A

Second Division

April 20, 1982

80-2773

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ROBERT E. BARD,

Plaintiff-Appellee,

v.

BETTY SANDER HARVEY,

Defendant-Appellant.

Appeal from the Circuit Court of Cook County.
Honorable MARY E. HOOTON, *Judge Presiding.*

ORDER DISPOSING OF APPEAL
UNDER SUPREME COURT RULE 23

On plaintiff's petition for rehearing, defendant's answer and plaintiff's reply, and upon further scrutiny of the record and consideration of the evidence, the opinion filed in this cause on December 29, 1981 is withdrawn and the following order is issued in its place disposing of the appeal under Supreme Rule 23. Ill. Rev. Stat., 1981 Supp., ch. 110A, par. 23.

Defendant, Betty Sander Harvey, appeals the trial court's entry of judgment notwithstanding the verdict in favor of plaintiff, Robert E. Bard, in plaintiff's action to recover attorney's fees.[1] Defendant also appeals the trial court's conditional granting of a new trial in the event the judgment n.o.v. is rebersed.

[1] In an earlier appeal, the trial court's entry of summary judgment in favor of plaintiff was reversed and the cause was remanded for further proceedings. See *Bard* v. *Harvey* (1979), 74 Ill. App. 3d 16, 392 N.E. 2d 371.

The evidence reveals that on August 11, 1976 defendant consulted plaintiff about the estate of her father which was pending in probate and about two other matters: (1) a pending suit for legal fees brought against defendant in Du Page County by John R. Mackay, one of her previous attorneys; and (2) a pending suit filed by defendant against the Harris Trust and Savings Bank and the Continental Bank and Trust Company, in which both banks had filed motions to strike and dismiss on the ground that defendant's complaint was barred by the statute of limitations.

Defendant brought to her meeting with plaintiff at his office a substantial number of "rather bulky" files pertaining to the above-mentioned lawsuits and related matters. She left nine of the files with plaintiff for his review and evaluation. After an initial conference, plaintiff wrote a letter to defendant outlining his understanding of the terms of the agreement they had reached. This letter, dated August 13, 1976, provided in pertinent part:

> "As was apparent in our discussion and the files which you produced, this is a very complicated legal case with many facets. Several lawyers have represented you already in this matter, and for one reason or another their services have been terminated. It is obvious that any new counsel now coming into the picture, particularly after the lapse of so many years, will have to spend a great deal of time simply *reviewing the files, interviewing persons from whom pertinent information may be elicited, and doing some basic legal research.*
>
> *I propose to take these initial steps on your behalf at the rate of $50.00 per hour payable on a current basis.* I will bill you for such hours as are actually spent by me in such an orientation process. • • •
>
> *The main purpose of undertaking such an analysis will be to try to arrive at an objective legal position for you in this matter. In other words, what right, if any, can you assert, and what are the practical*

consideration[*s*] *attached thereto?* Any opinion on my part will require at least the preliminary orientation covered above.

You must understand that I cannot guarantee any favorable results on your behalf. For that matter, it may very well be that my recommendation to you would turn out to be entirely negative. Needless to say, my approach will be in the affirmative, but in view of the prolonged history of this matter, I get the distinct impression that the odds are against you.

Both of us reserve the right to terminate my services for you at any time with the understanding that should that occur, you will promptly pay for the time I have rendered up to that point of termination at the above quoted rate.

* * *

There is the immediate problem of your *pending lawsuits.* As I understand it, . . . there are some rather *urgent court dates* to meet. It may well be that one or all of these matters will have to be referred to other counsel and it is my intention to study your files over this weekend and contact you the first part of the week of August 16 with some recommendations.

If you are in accord with the above, please sign the carbon copy of this letter at the appropriate place indicated and return the copy to me. * * *" (Emphasis added.)

Defendant signed the copy on August 16, 1976 and returned it to plaintiff.

Plaintiff prepared a *pro se* brief to be filed by defendant in opposition to the motions to strike and dismiss in her pending cases against the Harris and Continental banks. Defendant then had a further conference with plaintiff on August 17, 1976 at which time he explained that he had prepared the brief as a *pro se* brief because he had not yet decided to enter his appearance as counsel

in any of defendant's cases. Defendant signed the brief, filed it and mailed copies to opposing counsel. Also on August 17, plaintiff returned the file in the case of *Mackay v. Harvey* and told defendant that he could not handle that case because it was filed in Du Page County where he did not practice. Plaintiff referred defendant to another attorney.

On September 15, 1976, in a "letter of opinion" to defendant, plaintiff stated that he had reviewed defendant's various legal problems and concluded that he could not "hold out much hope for [her]" on any of the matters she had brought to his attention. Plaintiff stated further that in accordance with their written agreement he was terminating his services on behalf of defendant and requested full payment for all services rendered to date, which amounted to $1,250. In a letter dated October 10, 1976 defendant replied, "Thank you for your letter of September 15. Although I was disappointed in the content I will abide with your conclusion that you no longer wish to be involved." Defendant enclosed a check for $150 on account. At the time she wrote this letter, defendant had already entered her appearance *pro se* in all three of her lawsuits.

Plaintiff, who received a total of $325 from defendant, filed an action to recover the balance of $925. In addition to the evidence summarized above, plaintiff also introduced expert testimony purporting to show that plaintiff's legal opinion as to the relative merits of defendant's lawsuits was correct and that his fees were reasonable.

Defendant's position at trial was that plaintiff had not performed the services as they had agreed and in fact had worked to her disadvantage. Her testimony will be discussed more fully below. The jury returned a verdict for defendant and, on plaintiff's motion, the trial court entered judgment notwithstanding the verdict in plaintiff's favor.

Defendant's initial contention is that the trial court erred in entering judgment notwithstanding the verdict. In *Pedrick* v. *Peoria & Eastern R.R. Co.* (1967), 37 Ill. 2d 494, 229 N.E.2d 504, the court held that "judgment n.o.v. [should be] entered only in those cases in which all of the evidence, when viewed in its aspect most favorable to the opponent, so overwhelmingly favors movant that no contrary verdict based on the evidence could ever stand." (*Pedrick*, at 510.) Defendant contends that this standard was not met in this cause.

At trial defendant testified that she "believe[d]" that plaintiff had agreed to represent her in several pending lawsuits and had agreed to file malpractice suits against attorneys previously retained by her. In support of this belief defendant cites her testimony that in a telephone conversation on August 12, 1976, "we had [a] thorough discussion on all matters pending in Court and actions he would take on my behalf." But defendant's answer continued, "His rate of compensation was discussed. And he [plaintiff] said he would set forth the conditions of this compensation in a letter of agreement." That letter expressly gave each party the right to terminate plaintiff's services at any time with the understanding that defendant would compensate plaintiff for his services at the stated rate of $50 per hour up to the point of termination. Defendant signed and returned the letter to plaintiff. While defendant also testified that she "believed it [the August 13 letter of agreement] was merely supplemental to representations that [plaintiff] orally made, in person and on the phone, in which he assured me he would take care of my urgent court matters and protect my interests in the pending legal actions," defendant's conduct subsequent to her signing the agreement casts doubt on the reasonableness of this belief.

After plaintiff notified defendant that he did not believe any of her lawsuits had merit and terminated his services, defendant sent him a letter in which she thanked him for his communication and agreed to "abide with

your conclusion that you no longer wish to be involved." Enclosed with the letter was a check for $150 on account.

With respect to defendant's testimony that plaintiff had agreed to file malpractice suits against her previous lawyers, it is apparent that once plaintiff concluded that in his opinion there was little or no merit in any of defendant's lawsuits, there would be no merit in his filing any malpractice claims against her former attorneys.

Defendant also infers from the fact that plaintiff prepared a brief for defendant to file *pro se* in the Harris bank matter that the parties may have had an oral understanding that plaintiff would represent defendant in her pending lawsuits. Plaintiff, however, stated that he had prepared the brief as a *pro se* brief to be filed by defendant herself because he had not yet decided to enter his appearance as counsel in any of defendant's cases.

Finally, the mere fact that defendant's previous attorney had withdrawn from defendant's three lawsuits did not indicate that plaintiff had agreed to represent defendant in those actions. Indeed, in the letter of agreement plaintiff advised defendant that "[t]he main purpose of undertaking * * * an analysis [of her cases] will be to try to arrive at an objective legal position for you in this matter. In other words, what right, if any, can you assert * * * ?" Plaintiff further advised defendant that:

> "There is the immediate problem of your pending lawsuits. As I understand it, there are some rather urgent court dates to meet. It may well be that one or all of these matters will have to be referred to other counsel and it is my intention to study your files over this weekend and contact you the first part of the week of August 16 with some recommendations."

Defendant's other affirmative defenses alleged, in effect, that plaintiff had been guilty of negligence and malfeasance. Defendant, however, failed to present the ex-

pert testimony required to support such allegations. See *Schmidt* v. *Hinshaw, Culbertson, Moelman, Hoban & Fuller* (1979), 75 Ill. App. 3d 516, 394 N.E.2d 559.

We conclude that the evidence in this case established that plaintiff performed the services which he agreed to do, *i.e.*, that he examined defendant's files, researched the legal issues involved and took other steps he deemed necessary to form an opinion regarding the validity of defendant's claims. Once plaintiff determined that in his opinion those claims had no validity, plaintiff terminated his relationship with defendant in accordance with their agreement and defendant accepted that termination in writing. Plaintiff presented expert testimony that his fees were fair and reasonable. Defendant failed to meet her burden of proof as to any of her affirmative defenses.

Upon our close review, we find that the evidence in this case, when viewed in its aspect most favorable to defendant, so overwhelmingly favors plaintiff that no contrary verdict could ever stand (*Pedrick.*) Accordingly, we hold that the trial court did not err in entering judgment notwithstanding the verdict in favor of plaintiff. This conclusion makes it unnecessary to reach defendant's argument that the court erred in conditionally granting a new trial.

For the foregoing reasons, the judgment of the circuit court is affirmed.

Dated at Chicago, Illinois, this 20th day of April 1982.

STAMOS, P.J. PERLIN and DOWNING, JJ.

APPENDIX B

ILLINOIS SUPREME COURT

October 5, 1982

Ms. Betty Sander Harvey, Pro Se
834 Monroe Ave.
River Forest, IL 60306

No. 56923 — Robert E. Bard, respondent, vs. Betty Sander Harvey, petitioner. Leave to appeal, Appellate Court, First District.

The Supreme Court today *DENIED* the petition for leave to appeal in the above entitled cause. Simon, J., took no part.

Very truly yours,

/s/ Juleann Hornyak
Clerk of the Supreme Court

APPENDIX C

Second Division

June 15, 1982

IN THE APPELLATE COURT OF ILLINOIS

FIRST JUDICIAL DISTRICT

BETTY SANDER HARVEY (a/k/a Davis),
Plaintiff-Appellant,

vs.

ROBERT E. BARD and
BATES, DEPREE, BARD and WILSON,
Defendants-Appellees.

Appeal from the Circuit Court of Cook County.
Honorable PAUL F. ELWARD, *Judge Presiding.*

81-781

ORDER DISPOSING OF APPEAL
UNDER SUPREME COURT RULE 23

Plaintiff, Betty Sander Harvey, filed a *pro se* complaint against defendants, Robert Bard, an attorney, and his law firm for legal malplactice. Defendants subsequently filed a motion to dismiss the the complaint, claiming that the allegations were adjudicated at a prior trial and were *res judicata*. After a hearing, the trial court granted defendants' motion. Plaintiff now appeals *pro se* contending that the trial court erred in granting defendants' motion.

Plaintiff filed a lengthy complaint alleging in part that defendant Bard was negligent in that he failed to amend a complaint or perfect an appeal in a case involving the administration of her father's estate. Plaintiff further alleged that Bard breached his contract for employment entered into between the parties by failing to perfect an appeal or amend the complaint in the estate proceedings,

by failing to represent plaintiff in a legal malplactice action against her former attorney, and by failing to interview persons with valuable knowledge concerning the administration of her father's estate and to review documents and files.

Defendant Bard thereafter filed a motion to dismiss plaintiff's complaint claiming that the issues raised by plaintiff were previously adjudicated when Bard brought an action against plaintiff for attorney's fees. In the prior lawsuit filed by this defendant for fees, the trial court granted Bard's motion for summary judgment and allowed defendant to recover $925 in attorney's fees plus court costs. However, this court reversed the trial court's judgment and remanded the case for further proceedings after concluding that issues of material fact existed. *Bard* v. *Harvey* (1979), 74 Ill. App. 3d 16, 392 N.E.2d 371.

A jury trial was held in that case on May 27, 1980. At that time defendant presented evidence as to the reasonableness of his attorney's fees. Plaintiff appeared *pro se* at the trial and testified that defendant failed to properly handle her father's estate and failed to file a cause of action against the bank as executor and trustee of the estate, that defendant failed to represent her in her lawsuit against her former attorney, and that defendant failed to interview several witnesses and review certain documents at her request.

After hearing arguments by the parties, the jury returned a verdict in favor of plaintiff.[1] Defendant subsequently filed a motion for judgment notwithstanding the verdict, and this motion was granted by the trial court. The court stated in part as follows:

"The Court has listened to all of the arguments. The Court has reviewed its notes in the case and the

[1] Plaintiff apparently filed the present action following the jury verdict in her favor.

> Court states this is a case where the parties contracted for services.
>
> The Plaintiff [Bard] is suing for fees. He did do the work. The work was done well and the fees were fair and reasonable."

The decision of the trial court was recently affirmed by this court in a Rule 23 order. *Bard* v. *Harvey* (No. 80-2773 filed April 20, 1982).

Plaintiff initially contends that the trial court's judgment dismissing her suit against defendants for negligence and breach of contract is not *res judicata* since no final judgment exists in the original suit brought by defendant Bard. Plaintiff also contends that the trial court violated her constitutional right to a jury trial and that she was denied equal protection of the law because the trial court was allegedly prejudiced against her. Defendants basically maintain that plaintiff's action is barred since the issues raised in plaintiff's complaint were previously adjudicated at the earlier proceedings.

Under the doctrine of *res judicata*, a final judgment on the merits rendered by a court competent jurisdiction operates as a bar to any subsequent litigation between the same parties or their privies on matters found to be part of the same cause of action before the same or different tribunal. (*Hilti Inc.* v. *Griffith* (1979), 68 Ill. App. 3d 528, 532, 386 N.E.2d 63.) The prniciple of *res judicata* extends not only to matters actually decided but to all matters which might have been presented and decided. *Consolidated Distilled Products* v. *Allphin* (1978), 73 Ill. 2d 19, 28, 382 N.E.2d 217.

We have reviewed the issues presented by the parties in their lengthy briefs and are of the opinion that plaintiff was barred from instituting the present action against defendants for malplactice and breach of contract. In *Howell* v. *Goodrich* (1873), 69 Ill. 556, our supreme court determined that a judgment entered in favor of the plaintiff-doctor for services rendered was a bar to a subse-

quent suit filed by defendant for malpractice against the doctor where the defendant appeared at the prior action and interposed the defense of malpractice. We believe the situation in *Howell* is analogous to the present case. Here, Bard initially brought an action against plaintiff to recover fees for services rendered. Plaintiff presented evidence at the trial that Bard was not entitled to recover his fees since he failed to adequately represent her. Plaintiff apparently attempts to distinguish *Howell* by relying on the supreme court decision in *Barton* v. *Southwick* (1913), 258 Ill. 515, 101 N.E. 928. In *Barton*, the court found that an action brought by a physician for services rendered did not bar a subsequent suit for malpractice since the plaintiff did not appear at the prior action and allege a malpractice defense. Here, unlike *Barton*, plaintiff appeared at the earlier suit and presented eivdence in her defense that defendant was negligent in the performance of his duties. In light of the decision reached in *Howell*, we conclude that plaintiff was barred from filing the present suit against defendants.

Furthermore, despite plaintiff's argument that no final judgment exists in the original suit filed by defendant Bard, we note that this court recently affirmed the trial court's decision granting defendant Bard's motion for judgment *n.o.v.* Thus, plaintiff's argument is without merit.

Accordingly, the judgment of the circuit court of Cook County is affrmed.

Dated at Chicago, Illinois, this 15th day of June, 1982.

Stamos, P.J., Downing and Perlin, JJ.

APPENDIX D

September 2, 1982

Ms. Betty Sander Harvey
834 Monroe Avenue
River Forest, IL 60305

In re: Betty Sander Harvey (a/k/a Davis), petitioner, vs. Robert E. Bard, et al., respondents. No. 57173

Dear Ms. Harvey:

This office has today received and filed an order entered by Justice William G. Clark denying your motion by petitioner, pro se, for leave to file petition for appeal as a matter of right instanter in the above entitled cause.

It was further ordered that the motions by petitioner, pro se, for leave to file a reply to respondent's objections, and to disqualify the Justices of the Supreme Court and transfer the case to the Federal District Court are also denied.

Very truly yours,

/s/ Juleann Hornyak
Clerk of the Supreme Court

JH:gn

cc—Atty. David Andich
Roan & Grossman
55 West Monroe St.
Chicago, IL 60602

P.S. Our docket indicates that the $25.00 statutory docket fee has not been paid. Please forward your remittance as soon as possible so that we may remove this charge from our records.

APPENDIX E

Pages 5, 6 of Appellate Opinion — in
78-792

ROBERT E. BARD,

Plaintiff-Appellee,

v.

BETTY SANDER HARVEY (a/k/a DAVIS),

Defendant-Appellant.

Appeal from Circuit Court of Cook County.
Honorable HAROLD N. NUDELMAN, *Presiding.*

Mr. Justice Perlin delivered the opinion of the court:

Defendant contends that the pleadings and affidavits in the instant case presented the factual issue of whether all of the terms of the parties' agreement were contained in the letter dated August 13, 1976. Defendant stated in an affidavit that during the initial interview plaintiff orally agreed to perfect the appeal in the *Estate of Sander* case, to amend the *Harris Bank* case, to prepare a defense in the *Mackey* case and to prepare malpractice actions against attorneys previously retained by defendant. The letter agreement specifically refers only to the *Estate of Sander* case and then refers to "the immediate problem of your pending lawsuits" and "some rather urgent court dates to meet." The language "pending lawsuits" and "urgent court dates" is not defined and is ambiguous because at the time the letter was written defendant had at least two pending lawsuits, the *Harris Bank* case and the *Mackey* case, in addition to the *Estate* case. Also, plaintiff did, in fact, research and prepare a brief in the *Harris Bank* case. Thus, plaintiff's own actions indicate that there may have been an oral understanding between the parties and that there is a genuine issue of fact as to whether the letter agreement contained the parties'

complete agreement. In reference to the *Mackey* case, plaintiff stated in a letter dated January 13, 1977 that he had told defendant he could not handle the case; however, defendant stated in her affidavit that plaintiff agreed to prepare a defense to the case. Thus, an issue of fact is raised.

The pleadings and affidavits and accompanying exhibits present also a genuine issue of fact as to whether plaintiff performed the services outlined in the letter agreement. In the letter plaintiff stated he would interview certain persons to obtain information, study the files and make a recommendation to defendant during the week of August 16, 1976. Defendant stated in her affidavit that plaintiff did not interview the persons as agreed and did not make any recommendations to her until September 15, 1976 at which time he terminated his services. It has been held that whether a contract has been performed according to its terms is a question of fact. *George F. Mueller & Sons, Inc.* v. *Northern Illinois Gas Co.* (1st Dist. 1975), 32 Ill. App.3d 249, 253, 336 N.E.2d 185.

We conclude that genuine issues of material fact were raised by the pleadings and affidavits and that the court erred in granting summary judgment for plaintiff.

Defendant also contends that she was denied a fair hearing because the judge displayed prejudice against her and failed to protect her constitutional rights. A reading of the record does not support defendant's allegations. Rather, the record indicates that the judge was patient with defendant and he allowed her an opportunity to present her case. Defendant contends that since she was appearing pro se, she should have been granted more leeway than is granted attorneys who appear before the court. It has been held in criminal cases that once a defendant chooses to waive counsel and represent himself, he is responsible for conducting his own defense (*People* v. *Richardson* (1959), 17 Ill.2d 253, 260, 161 N.E.2d 268) and he may not expect favored treatment even though

the result may be that he is less effective as his own attorney (*People* v. *Tuczynski* (1st Dist. 1978), 62 Ill. App. 3d 644, 650, 378 N.E.2d 1200). This same principle should apply in civil cases.

Based on the foregoing we reverse the order of the circuit court of Cook County and remand the cause for further proceedings not inconsistent with this opinion.

Reversed and remanded.

Stamos, P.J., and Downing, J., concur.

APPENDIX F

Page 5 and 6 of Appellate Court Opinion

December 29, 1981

80-27773

BETTY SANDER HARVEY,

Defendant-Appellant,

v.

ROBERT E. BARD,

Plaintiff-Appellee.

Appeal from Circuit Court of Cook County.
Honorable MARY H. HOOTON, *Presiding.*

JUSTICE PERLIN delivered the opinion of the court:

In our earlier opinion, predicated on the trial court's granting of summary judgment, we noted that where the language of a contract is ambiguous, extrinsic evidence, including prior negotiations between the parties, any oral understandings, and the parties' conduct, is admissible to determine the parties' intentions. (See *Dixie Square Thom McAn, Inc.* v. *Dixie Square Management Co., Inc.*, (1977), 55 Ill. App.3d 619, 370 N.E.2d 1256.) The letter agreement in the instant case refers to "the immediate problem of your pending lawsuits' and "some rather urgent court dates." This language is not defined and is ambiguous because at the time the letter was written defendant had at least two pending lawsuits. We concluded that there was a genuine issue of material fact as to whether the letter agreement contained the parties' complete agreement.

The determination of the understanding between the parties was a material issue of fact for the jury. The evidence was lengthy and involved and ultimately turned on the credibility of the parties. It is the function of the jury to weigh contradictory evidence, judge the credibility

of the witnesses and draw ultimate conclusions as to the facts. The jury's determination will not be disturbed merely because a jury could have found differently or judges might find other conclusions to be more reasonable. *Kupcikevicius* v. *Fitzgibbons* (1976), 41 Ill. App.3d 405, 354 N.E.2d 434; see also *Mizowek* v. *De Franco* (1976), 64 Ill.2d 303, 310, 356 N.E.2d 32.

We find that under the rule of the *Pedrick* case, when the evidence in the case at bar is viewed in its aspect most favorable to defendant, it does not so overwhelmingly favor plaintiff that the jury's verdict in defendant's favor could not stand. We hold, therefore, that the trial court erred in entering judgment n.o.v. stated he would interview certain persons to obtain information, study the files and make a recommendation to defendant during the week of August 16, 1976. Defendant stated in her affidavit that plaintiff did not interview the persons as agreed and did not make any recommendations to her until September 15, 1976 at which time he terminated his services. It has been held that whether a contract has been performed according to its terms is a question of fact. *George F. Mueller & Sons, Inc.* v. *Northern Illinois Gas Co.* (1st Dist. 1975), 32 Ill. App.3d 249, 253, 336 N.E.2d 185.

We conclude that genuine issues of material fact were raised by the pleadings and affidavits and that the court erred in granting summary judgment for plaintiff.

Defendant also contends that she was denied a fair hearing because the judge displayed prejudice against her and failed to protect her constitutional rights. A reading of the record does not support defendant's allegations. Rather, the record indicates that the judge was patient with defendant and he allowed her an opportunity to present her case. Defendant contends that since she was appearing pro se, she should have been granted more leeway than is granted attorneys who appear before the court. It has been held in criminal cases that once a defendant chooses to waive counsel and represent himself, he is responsible for conducting his own defense (*People* v. *Rich-*

ardson (1959), 17 Ill.2d 253, 260, 161 N.E.2d 268) and he may not expect favored treatment even though the result may be that he is less effective as his own attorney (*People* v. *Tuczynski* (1st Dist. 1978), 62 Ill. App.3d 644, 650, 378 N.E.2d 1200). This same principle should apply in civil cases.

Based on the foregoing we reverse the order of the circuit court of Cook County and remand the cause for further proceedings not inconsistent with this opinion.

Reversed and remanded.

Stamos, P.J., and Downing, J., concur.

APPENDIX G

In The

CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Municipal Department, First District

HARVEY,

Plaintiff,

v.

BARD, et al.,

Defendants.

No. 80 L 14172

ORDER

This cause coming on for hearing on the Motion of Defendants to Dismiss the Complaint, previously set for hearing by Order of December 3, 1980, and on Plaintiffs' Motion for Change of Venue, filed and served on counsel at approximately 2:30 p.m., January 8, 1981, the Court hearing arguments of counsel and Mrs. Harvey only on Plaintiff's Motion in Change of Venue, and being fully advised in the premises,

IT IS HEREBY ORDERED

1) That Plaintiffs Motion for Change of Venue is denied,

2) That Defendants Motion to Dismiss originally set for hearing at 2:30 p.m. today, January 8, 1981, is continued to March 2, 1981, at 2:20 p.m. without further notice,

3) That Plaintiff has until February 5, 1981, to file any further response to Defendants' Motion to Dismiss, and

4) That Defendant's have until February 26, 1981, to file any response in support of this Motion to Dismiss.

Enter:

/s/ Judge Paul F. Elward

Jan. 8, 1981

APPENDIX H

In The

CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Municipal Department, First District

ROBERT E. BARD,

Plaintiff,

v.

BETTY SANDER HARVEY, a/k/a
MRS E. HOWARD HARVEY,

Defendant.

Entered In Special Order Book Page 74

No. 77 M1-109422

ORDER

Filed Oct 8, 1980

This day this case came on to be heard on the post-trial motion by plaintiff for judgment notwithstanding the verdict, or, in the alternative, for a new trial, and the court, after considering the briefs submitted by the parties, defendant's affidavit, the oral arguments of both parties, and after reviewing the testimony and the exhibits received in evidence at the trial, does find that plaintiff proved his case by a preponderance of the evidence and that no evidence of any probative value was offered by the defendant to deny or refute his claim. Accordingly, the motion by plaintiff for judgment notwithstanding the verdict is granted and judgment is entered for the plaintiff and against the defendant for $925.00 with interest from September 15, 1976, and his costs of suit.

The court further orders that in the event that its ruling in this case is reversed on appeal, this court orders that a new trial be granted for the reason that the defendant was guilty of repeated misconduct committed in the presence of the jury which was prejudicial to a fair trial on the issues and for the further reason that the verdict of the jury was against the manifest weight of the evidence and against the preponderance of the evidence.

Enter:

/s/ Morgan M. Finley
Judge

MINOR K. WILSON
Attorney for Plaintiff
135 S. LaSalle - Suite 2020
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(312) 332-3933